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Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KATHRYN AGNEW,

Plaintiff,

v.

SMITH'S FOOD KING PROPERTIES, INC.,
doing business as a Foreign Corporation,
SMITH'S FOOD & DRUG CENTERS, INC.,
doing business as a Foreign Limited-Liability
Company, KROGER DEDICATED
LOGISTICS, CO., doing business as a Foreign
Corporation and DOES I-V, inclusive,

Defendants.

Case No.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. (hereinafter "SMITH'S") hereby gives notice of its removal of Case No. CV20-01426 from the Second Judicial District Court, Washoe County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.

NOTICE OF REMOVAL IS TIMELY

1. On September 11, 2020, Plaintiff KATHRYN AGNEW, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about September 14, 2020. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

1 3. The prayer for judgment in Plaintiff's Complaint filed and served on SMITH'S states:
2 "2. For Judgement for general damages in the amount in excess of \$15,000.00;" (Compl. at 3).

3 4. Defense counsel learned that the value of this case was sufficient for Federal
4 jurisdiction on November 30, 2020. On that date, Plaintiff filed and served a Request for Exemption
5 from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges her current medical
6 specials total \$119,509.00." (Pl.'s Request at 2).

7 Upon receiving this information, Defense counsel learned that the "amount in controversy"
8 exceeds the jurisdictional minimum for diversity jurisdiction.

9 5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

10 If the case stated by the initial pleading is not removable, a notice of
11 removal may be filed within thirty days after receipt by the defendant,
12 through service or otherwise, of a copy of an amended pleading,
13 motion, order or other paper from which it may first be ascertained
14 that the case is one which is or has become removable, except that a
case may not be removed on the basis of jurisdiction conferred by
section 1332 of this title more than 1 year after commencement of the
action.

15 6. The following pleadings have been entered and/or filed in State Court:

- 16 a. Plaintiff's Complaint filed September 11, 2020;
17 b. Proof of Service of Summons and Complaint upon SMITH'S FOOD &
18 DRUG CENTERS, INC. filed September 15, 2020;
19 c. Proof of Service of Summons and Complaint upon KROGER DEDICATED
20 LOGISTICS, CO. filed September 15, 2020;
21 d. Amended Complaint filed October 28, 2020;
22 e. Proof of Service of Summons and Amended Complaint upon SMITH'S
23 FOOD & DRUG CENTERS, INC. filed November 9, 2020;
24 f. Proof of Service of Summons and Amended Complaint upon SMITH'S
25 FOOD & DRUG CENTERS, INC. – via Jerry Busby, Esq. filed
26 November 9, 2020;
27 g. SMITH'S Answer to Plaintiff's Amended Complaint filed
28 November 24, 2020; and

h. Plaintiff's Request for Exemption from Arbitration was served and filed on November 30, 2020.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Washoe County, Nevada as of the filing of this notice of removal.

II.

DIVERSITY JURISDICTION EXISTS

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

A. The Amount in Controversy Requirement is Satisfied.

9. The prayer for judgment in Plaintiff's Complaint filed and served on SMITH'S states: "2. For Judgement for general damages in the amount in excess of \$15,000.00;" (Compl. at 3).

10. Plaintiff's Request for Exemption from Arbitration, which was filed electronically on November 30, 2020, indicates that Plaintiff's current medical specials total \$119,509.00." (Pl.'s Request at 2).

B. The Parties Are Diverse.

11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada. (*See* Compl. ¶2) .

12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

13. The original Complaint filed in State Court included Kroger Dedicated Logistics, Co. as a Defendant. Plaintiff's attorney was notified by Defense counsel that Kroger Dedicated Logistics, Co. was not a proper entity to this litigation. Accordingly, Plaintiff filed an Amended Complaint which does not include Dedicated Logistics, Co. Thus, the only Defendant in this action is SMITH'S.

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III.

REMOVAL TO THIS JURISDICTION IS PROPER

14. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

15. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

16. SMITH'S reserves the right to amend or supplement this Notice of Removal.

17. SMITH'S reserves all defenses, including, without limitation, the defense of lack of personal jurisdiction.

18. SMITH'S requests a trial by jury of all issues.

19. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Second Judicial District Court, Washoe County, Nevada, where the action is currently pending.

Dated this 30th day of December, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby
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